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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/671,388

09/25/2003

Michael S. Brunner

18731

4250

23556

7590

04/22/2008

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EXAMINER

MERCIER, MELISSA S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/671,388	Applicant(s) BRUNNER, MICHAEL S.	
	Examiner MELISSA S. MERCIER	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,10 and 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-9, 11-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 14, 2008 has been entered. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application. Claims 1-22 are pending in this application. Claims 6-7, 10, 13-22 remain withdrawn from consideration. Claims 1-5, 8-9, and 11-12 remain under prosecution in this application. **It is again noted that applicant has not indicated in the claim set that claims 6-7, 10, and 13-14 have been withdrawn from consideration as reading on Non-elected species. Applicant is requested to modify the claim identifiers to reflect their true status in response to this office action.**

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 8-9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDevitt et al. (US Patent 6,647,549) in view of Wortzman (US Patent 4,820,508).

McDevitt discloses a finger glove that can fit onto a human finger is provided. The finger glove can be used as a substitute for cotton balls, swabs, and/or gauzes, or as an oral cleaning device. The finger glove is at least partially made from an elastomeric material such that the glove can more aptly fit onto a finger. Moreover, the glove can also be partially made from a texturized material having an abrasive surface useful for cleaning surfaces. Furthermore, the glove, in some instances, can possess a barrier that is liquid-impermeable, but vapor-permeable so that the finger of a user is more comfortable during use. Various additives can be applied to the glove (abstract). A finger glove of the present invention is generally formed from a base web material that is shaped into a glove (column 5, lines 28-30). The base web can be a nonwoven web made from pulp fibers, synthetic fibers, thermomechanical pulp and mixtures thereof (column 5, lines 35-40). The base material may further include elastomeric components (column 5, lines 45-47). McDevitt discloses the finger glove can be made formed from multiple sections. The first section can be made from a texturized nonwoven material having an abrasive surface useful for cleaning. A second section, or backing, can be made from an elastic nonwoven material having form fitting properties to help the glove effectively fit the finger (column 5, line 61 through column 6, line 2). Applicant's attention is directed toward the figures, specifically figures 1-4, which show a top section attached

to a bottom section in a manner that forms a seam. The finger glove can be used to apply medications and ointments, for example (column 8, lines 6-11).

Regarding the limitation of claim 3-5, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have applied a formulation to any part of the exterior surface of the glove. There does not appear to any criticality afforded to the location of the lip care formulation onto the finger glove. McDevitt does disclose the additives can be applied to the glove asymmetrically, thereby allowing the user/manufacturer to apply the formulation where it is needed.

McDevitt does not disclose the lip care formulation of the instant claims.

Wortzman discloses a skin protective composition suitable for application as a lip balm product (column 5, lines 23-26) comprising oxybenzone and padimate O (column 6, lines 23-46) and dimethicone (Example 2-3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated the lip care formulation of Wortzman into the finger glove of McDevitt since McDevitt discloses it can be used as a substitute for cotton balls, swabs, and or gauzes (abstract). McDevitt further discloses a need exists to supply a finger glove capable of insulating a finger while delivering a particular additive (Column 1, lines 30-32).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,647,549.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent discloses the finger glove with option of additives being placed onto or impregnated into the substrate. Furthermore, the claims have comprising terminology allowing for the addition of other components, such as a lip care formulation.

Claims 1-5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 29, of U.S. Patent No. 6,721,987.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent discloses the finger glove with option of additives being placed onto or impregnated into the substrate. Furthermore, the claims have comprising terminology allowing for the addition of other components, such as a lip care formulation.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/Michael P Woodward/
Supervisory Patent Examiner
Art Unit 1615